

STATE OF INDIANA)
) SS:
COUNTY OF MADISON)

IN THE MADISON CIRCUIT COURT
CAUSE NO. 48C01-0808-PL-00803

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
PAYTON WELLS,)
individually and doing business as Anderson)
Ford Lincoln Mercury, Inc. and Anderson Chrysler)
Plymouth Dodge, Inc., KEVIN KIMBROUGH,)
individually and doing business as Anderson)
Ford Lincoln Mercury, Inc. and Anderson)
Chrysler Plymouth Dodge, Inc., ANDERSON)
FORD LINCOLN MERCURY, INC., and)
ANDERSON CHRYSLER PLYMOUTH)
DODGE, INC.,)
)
Defendants.)

**SUMMARY JUDGMENT AGAINST PAYTON WELLS, ANDERSON FORD LINCOLN
MERCURY, INC. AND ANDERSON CHRYSLER PLYMOUTH DODGE, INC.**

The Plaintiff, State of Indiana, by Attorney General Gregory F. Zoeller, Certified Intern E. Paige Boggs and Deputy Attorney General Thomas Irons, having filed its Motion for Summary Judgment against Payton Wells, Anderson Ford Lincoln Mercury, Inc. and Anderson Chrysler Plymouth Dodge, Inc. (hereinafter referred to as the "Wells Defendants") and its Memorandum in Support of Summary Judgment, and the Court having concluded a hearing on the same, now **GRANTS** the Plaintiff's Motion and makes the following findings of undisputed facts and conclusions of law.

FINDS OF FACTS AND CONCLUSIONS OF LAW

1. On or around November 15, 2006, Richard T. Merriman ("Merriman") purchased a 2005 Ford Taurus, VIN 1FAFP53UX5A264058, from Anderson Ford Lincoln Mercury, Inc. ("Anderson Ford").

2. Merriman's lienholder paid Anderson Ford in full for Merriman's vehicle.

3. At the time of sale, Anderson Ford represented it would deliver Merriman's car title to Merriman or his lienholder within a reasonable period of time.

4. To date, Anderson Ford has failed to deliver title to Merriman or his lienholder.

5. On or about December 2, 2006, Tony N. Moody ("Moody") purchased a 2005 Ford F Series Truck from Anderson Ford. As part of the purchase, Moody traded a 1999 Jeep Cherokee, VIN 1J4FF68S3XL620183.

6. Anderson Ford represented it would pay off the remaining balance on Moody's trade vehicle in the amount of \$8,000.00.

7. To date, Anderson Ford has not paid off the Moody trade vehicle.

8. On or about December 9, 2006, James Wright ("Wright") purchased a 2007 Ford Truck F Series from Anderson Ford. As part of the purchase, Wright traded a 1998 Chevrolet, VIN 1GCGK29FXWE244116.

9. Anderson Ford represented it would pay off the lien on the Wright trade vehicle in the amount of \$9,695.58.

10. To date, Anderson Ford has not paid off the Wright trade vehicle.

11. On or about December 15, 2006, Elissa and Robert Burton ("the Burtons") leased a 2005 Jeep Liberty from Anderson Chrysler Plymouth Dodge, Inc. ("Anderson Chrysler"). As

part of the lease, the Burtons traded a 2004 Volkswagen New Beetle, VIN 3VWCD31Y14M348235 that Robert Burton purchased for Elissa Burton.

12. Anderson Chrysler represented it would pay off the lien on the Burtons trade vehicle in the amount of \$24,000.00.

13. To date, Anderson Chrysler has not paid off the Burtons trade vehicle.

14. On or about November 27, 2006, Terri Lynn Harting ("Harting") leased a 2006 Dodge Truck Durango from Anderson Chrysler. As part of the lease, Harting traded a 2001 Ford Truck Windstar, VIN 2FMDA56401BB93333.

15. Anderson Chrysler represented it would pay off the lien on the Harting trade vehicle in the amount of \$15,300.00.

16. To date, Anderson Chrysler has not paid off the Harting trade vehicle.

17. On or about December 18, 2006, Daniel Dean Livesay ("D. Livesay") purchased a 2007 Dodge Caliber from Anderson Chrysler. As part of the purchase, D. Livesay traded a 2006 Scion, VIN JTLKT324264050924.

18. Anderson Chrysler represented it would pay off the lien on the D. Livesay trade vehicle in the amount of \$16,958.25.

19. To date, Anderson Chrysler has not paid off the D. Livesay trade vehicle.

20. On or about November 29, 2006, Darcie L. McCorkle ("McCorkle") purchased a 2005 Chevrolet Truck from Anderson Chrysler. As part of the purchase McCorkle traded a 2001 Pontiac Grand Am, VIN 1G2NF52T31M506655.

21. Anderson Chrysler represented it would pay off the lien on the McCorkle trade vehicle in the amount of \$7,900.00.

22. To date, Anderson Chrysler has not paid off the McCorkle trade vehicle.

23. On or about December 27, 2006, Clyde and Denise Millsaps ("Millsaps") purchased a 2007 Dodge Caliber from Anderson Chrysler. As part of the purchase Millsaps traded a 2005 Chevrolet Aveo, VIN KL1TG62695B413700.

24. Anderson Chrysler represented it would pay off the lien on the Millsaps trade vehicle in the amount of \$10,517.00.

25. To date, Anderson Chrysler has not paid off the Millsaps trade vehicle.

26. On or about December 21, 2006, Todd A. Stroup ("Stroup") purchased a 2007 Dodge Truck Nitro from Anderson Chrysler. As part of the purchase Stroup traded a 2000 Dodge Grand Caravan, VIN 1B4GP44G2YB774546.

27. Anderson Chrysler represented it would pay off the lien on the Stroup trade vehicle in the amount of \$4,200.00.

28. To date, Anderson Chrysler has not paid off the Stroup trade vehicle.

29. The Wells Defendants violated the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10) by representing they would deliver or complete the subject of consumer transactions within a stated or reasonable period of time when they knew or reasonably should have known that they could not.

30. The Wells Defendants knowingly violated Ind. Code § 24-5-0.5-3(a)(10).

31. Pursuant to Ind. Code § 24-5-0.5-4(c)(3), the State is entitled to recover its reasonable cost of investigation and prosecution of this cause. The Declaration Supporting Request for Attorney Fees identifies six (6) hours at One Hundred Fifty Dollars (\$150.00), for a total of Nine Hundred Dollars (\$900.00).

JUDGMENT

IT IS ORDERED, ADJUDGED, AND DECREED, the Plaintiff's Motion for Summary Judgment against Payton Wells, Anderson Ford Lincoln Mercury, Inc. and Anderson Chrysler Plymouth Dodge, Inc. is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, pursuant to Ind. Code § 24-5-0.5-4(c)(1), Payton Wells, Anderson Ford Lincoln Mercury, Inc. and Anderson Chrysler Plymouth Dodge, Inc., their agents, representatives, employees, successors and assigns are permanently enjoined from misrepresenting the terms and conditions of pay-off agreement and from misrepresenting their ability to complete the subject of a consumer transaction within a stated or reasonable period of time.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of the Plaintiff, State of Indiana, and against Payton Wells, Anderson Ford Lincoln Mercury, Inc. and Anderson Chrysler Plymouth Dodge, Inc. as follows:

- a. restitution in the form of a Court Order directing the Bureau of Motor Vehicles to issue a title for Richard Merriman's 2005 Ford Taurus, VIN 1FAFP53UX5A264058 that he purchased from Anderson Ford Lincoln Mercury, Inc.
- b. restitution to pay-off trade vehicles for the following consumers in the following amounts:
 1. Tony N. Moody (\$8,000.00);
 2. James Wright (\$9,695.58);
 3. Robert Burton (\$24,000.00);
 4. Terri Lynn Harting (\$15,300.00);

5. Daniel Dean Livesay (\$16,958.25);
 6. Darcie L. McCorkle (\$7,900.00);
 7. Clyde and Denise Millsaps (\$10,517.00); and
 8. Todd A. Stroup (\$4,200.00).
- c. civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Wells Defendants' knowing violations of Ind. Code § 24-5-0.5-3(a)(9) in the amount of Five Thousand Dollars (\$5,000.00) per violation for a total amount of Forty-Five Thousand Dollars (\$45,000.00);
- d. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable costs expenses incurred in the investigation and prosecution of this action in the amount of Nine Hundred Dollars (\$900.00); and
- e. all other just and proper relief.

A total monetary judgment in the amount of One Hundred Forty-Two Thousand Four Hundred Seventy Dollars and Eighty-Three Cents (\$142,470.83) is therefore entered in favor of the Plaintiff, State of Indiana, and against Payton Wells, Anderson Ford Lincoln Mercury, Inc. and Anderson Chrysler Plymouth Dodge, Inc.

All of which is **ORDERED, ADJUDGED, and DECREED**, this 12 day of March, 2009.



Judge, Madison Circuit Court

Distribution:

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